IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FARAD CONTINUATION SHEET

FIRST APPEAL NO. 769 OF 2004 with

Maharastra State Road
Transport Corporation ...Appellants

Vs.

Smt.Bhikabai Laxman Savant & Ors. ...Respondents

FIRST APPEAL NO.622 OF 2004

Maharashtra State Road Transport
Corporation ...Appellant

Vs.

Smt.Jijabai T. Sawant & Ors. ...Respondents

CORAM: A.S.OKA, J.

DATED: AUGUST 30, 2004.

P.C.:

1. Heard Counsel appearing for the parties. As both the Appeals arise out of the same accident, both can be conveniently disposed of by passing a common order.

2. On 15th July 1987 deceased Tukaram was driving his motor cycle and deceased Laxman was sitting on the motor cycle as a pillion rider. The deceased Tukaram was returning to his home at Shiroli which comes under Chandoli Village on Pune Nasik Road. When the deceased Tukaram came near the spot of

accident, the bus owned by the Appellant Maharashtra State Transport Road Corporation came from Pune towards Nasik in a very great speed. The bus went on the wrong side of the road and dashed against the motor cycle. Both Tukaram and Laxman died immediately as a result of injuries sustained in the accident. In so far as the Claim Petition filed by the legal representatives of deceased Laxman is concerned, the Tribunal awarded Rs.1,50,000/- and in so far the other Claim Petition filed by the legal representatives of deceased Tukaram is concerned the Tribunal awarded Rs.2,00,000/-. In both the cases interest at the rate of 12% per annum has been awarded.

3. Shri Hegde appearing for the Appellant in both the Appeals submitted that it is crystal clear from the evidence that accident took place due to negligence of deceased Tukaram. He relied upon the certified copy of the spot panchnama which is on record. He submitted that evidence of Sayaji Maruti who is allegedly an eye witness to the accident cannot be accepted as the said witness has made improvement in the case made out by the Applicants and stated that when the accident took place the motor cycle was stationary. He pointed out that though a case is made out by the said Sayaji that the accident took place when both the deceased were talking to him by the side of the road, the said Sayaji has not suffered any injury. He pointed out that quantum of compensation is on the higher side. He pointed out that interest at the rate of 12% p.a. could not have been awarded

in both the cases.

4. Shri Nighot the learned Counsel appearing for original claimants in both the Appeals has supported the impugned Judgments and Awards.

5. I have considered the rival submissions. I have also perused the compilation of the copies of the documents on record of the Tribunal, copies of the pleadings as well as notes of evidence.

6. It is pertinent to note that though the Appellant-Maharashtra State Road Transport Corporation has made out a case that the accident took place only due to negligence on the part of deceased Tukaram who was driving the motor cycle, the driver of the offending S.T.Bus has not been examined. It is not a case where any attempt was made by the Appellant-S.T. Corporation to procure the presence of the driver. The driver could have thrown light on the cause of the accident. However, no explanation is forthcoming as to why the driver was not examined. Therefore, the Tribunal has considered the evidence of the eye witness and came to the conclusion that the accident occurred due to negligence on the part of the driver of the bus. Considering the fact that no effort was made by the S.T.Corporation to examine the driver, this is a fit case where adverse inference was required to be drawn against the Appellant.

7. In so far as quantum of compensation is concerned, in First Appeal No.769 of 2004 which deals with the Claim made by the legal representatives of deceased Laxman, the Tribunal has awarded the sum of Rs.1,50,000/- as the age of the deceased was 45 years. The Tribunal has accepted that the deceased was cultivating agricultural land admeasuring 10 acres. The Tribunal has also accepted that the deceased had dairy business from which according to the claimants he was getting independent income of Rs.4000/- per month. There is an evidence on record which indicates that after the death of Laxman, cattle was disposed of as there was no one to look after the cattle and milk business. Even if the income allegedly received by the deceased from agriculture is totally ignored, it appears that the deceased was getting Rs.4000/- per month on dairy business. Taking the said income and after deducting a sum of Rs.1500/- for personal expenditure of the deceased, multiplicand will come to Rs.30,000/- (2,500/- X 12). Even if multiplier of 8 is applied, taking into consideration that deceased was 45 years of age, the compensation will be more than 2,00,000/-. It is true that there are recent Judgments of the Apex Court in which a view is taken that due to falling interest rates, interest at the rate of 9% should be awarded. However, in the present case the Award is passed in January 2001 and the claim is filed in December 1987. Considering the fact that quantum is on the lower side and considering the fact that

the claim was disposed of in January 2001, there is no reason to interfere with the rate of interest of 12% awarded by the Tribunal.

8. In so far as First Appeal No.622 of 2004 is concerned, the same deals with the claim made by the legal representatives of deceased Tukaram whose age was 32 years at the time of accident. The Tribunal has taken income of deceased at its minimum i.e. Rs.1500/- from both the sources of income i.e. from milk business and agriculture. After deducting one third for personal expenditure, yearly dependency is taken at Rs.12,000/-. Multiplier of 15 is taken as the age of deceased was 32 years. This is how the compensation of Rs.2,00,000/- has been awarded after granting the sum of Rs.20,000/- by way of usual amount on account of mental pain and suffering and funeral expenses. It is pertinent to note that prospects of future increase in income are not taken into consideration by the Tribunal while arriving at multiplicand. This claim is also filed in December 1987 and decided in January 2001. Considering this fact the compensation awarded by the Trial Court as well as rate of interest is just and proper.

9. There is no merit in the Appeals and same are dismissed with no order as to costs.

Judge.